Supreme Court, U.S.
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No. 90-1711

In The

Supreme Court of the United States

October Term, 1990

GLADYS M. GRIDLEY,

Petitioner,

v.

CLEVELAND PNEUMATIC COMPANY, et al.,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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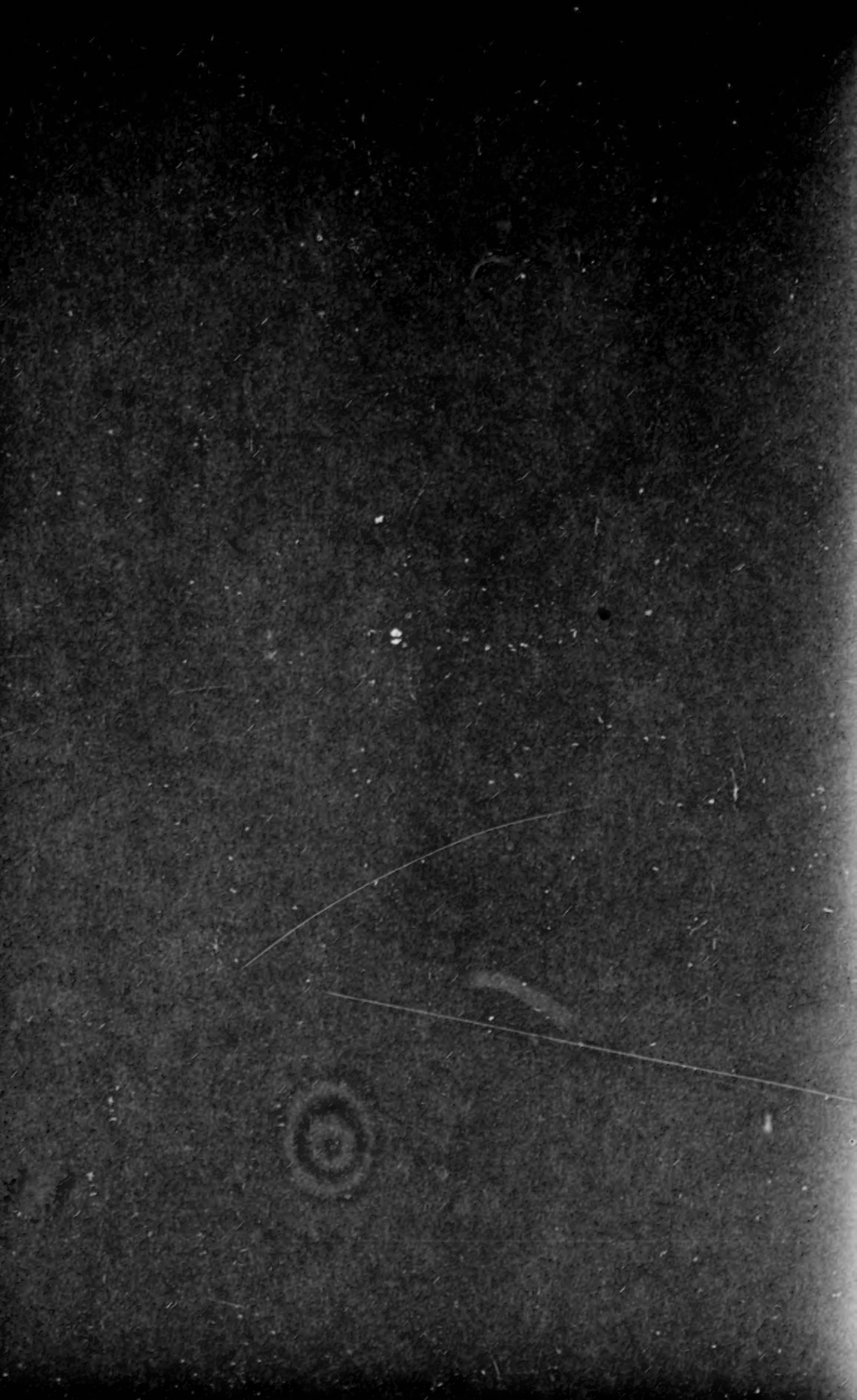

QUESTIONS PRESENTED

1. Whether an employee benefit brochure distributed by a plan administrator to employees constitutes a summary plan description under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, et seq., when the brochure summarizes benefits and the plan administrator testifies that the brochure was considered by it to be the summary plan description for a new benefits package?

2. Whether ERISA affords to Petitioner, under the facts of this case, a remedy for the failure of the plan administrator to comply with the statutory mandate to supply a summary plan description which contains conditions of eligibility, disqualification and denial or loss of benefits?

PARTIES IN THE COURTS BELOW

GLADYS M. GRIDLEY,

Plaintiff

vs.

CLEVELAND PNEUMATIC COMPANY*, a subsidiary of Pneumo Corporation, a subsidiary of IC Industries; MARJORIE ANN SMITH, individually and as manager of Employee Benefits and Services; PATRICIA BORAH, individually and as Employee Benefits Administrator; JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,

Defendants

* At the present time Cleveland Pneumatic Company is wholly owned by Pneumo Abex Corp., which is wholly owned by Henley Group, Inc. and Wasserstein, Perella & Company, Inc., acting through a joint venture named P.A. Holdings.

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OPINIONS AND JUDGMENTS IN THE COURT BELOW

Prior to the trial of this action, the District Court for the Middle District of Pennsylvania issued an Opinion and Order which is reported at 127 F.R.D. 102 (M.D.Pa. 1990), and which has no pertinence to the questions presented to this Court for review. The District Court's Opinion and Final Order, issued after the trial, has not been officially reported, and is reproduced in the Appendix to the Petitioner's Petition for Writ of Certiorari. The Third Circuit Court of Appeals reversed the District Court with an Opinion, reported at 924 F.2d 1310 (3d Cir. 1991).

STATUTES INVOLVED

Employee Retirement Income Security Act (ERISA) § 101, 29 U.S.C. § 1001

Set forth in Petition for Writ of Certiorari

ERISA § 102, 29 U.S.C. § 1022

Set forth in Petition for Writ of Certiorari

ERISA § 104(b)(1), 29 U.S.C. § 1024(b)(1)

* * *

If there is a modification or change described in Section 1022(a)(1) of this title, a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan.

ERISA § 502(a), 29 U.S.C. § 1132(a)

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action. A civil action may be brought –

(1) by a participant or beneficiary –

(A) for the relief provided for in subsection (c) of this section; or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under Section 409 [29 U.S.C. § 1109];

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c) [29 U.S.C.S. § 1025(c)];

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title; or

(6) by the Secretary to collect any civil penalty under subsection (i).

ERISA § 502(c), 29 U.S.C. § 1132(c)

(c) Administrator's refusal to supply requested information. Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this title to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

STATEMENT OF THE CASE

The Petitioner's statement of the case is accurate, but omits certain matters which Respondent believes to be pertinent to the Court's consideration of the Petition.

The District Court begins its discussion of the case by noting that Mrs. Gridley made three arguments in support of her claim for increased life insurance benefits.

> Her first argument is that she is entitled to recover benefits under the summary plan description, (Plaintiff's Exhibit 19), relating to the new plan. Next, Gridley claims that she is entitled to recover insurance benefits under the new plan based upon the policy of insurance itself as last amended prior to January 1, 1986. That amendment uses the phrase "actively at work" which is defined in the certificate booklet, (Plaintiff's Exhibit 14). Finally, Gridley claims that she is entitled to recover insurance benefits under the new plan based upon the theory of promissory estoppel.
>
> (Appendix attached to Petition for Writ of Certiorari [hereinafter "App."] p. 71a)

The District Court holds that Mrs. Gridley is entitled to the increased life insurance benefit on the grounds that the Employee Benefits Summary, (Plaintiff's Exhibit 19, referred to by the Court of Appeals as the "new overview brochure"), distributed to Plaintiff, was a summary plan description which failed to set forth the "actively at work" condition, precluding participation in benefit increases until the employee was "actively at work" (App. p. 76a).

The District Court gives no indication of what section of ERISA provides the remedy the Court grants for a violation of the ERISA requirements for summary plan descriptions, set forth at 29 U.S.C. § 1022(b).

The Court goes on to analyze Petitioner's second argument:

> Gridley's second argument is that she is entitled to recover insurance benefits under the new plan based upon the policy of insurance itself as last amended prior to January 1, 1986. ERISA, 29 U.S.C. § 1132(a)(1)(B) provides that a beneficiary of an employee benefits plan may bring a civil action:
>
> > (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
>
> (App. p. 79a)

The District Court finds that the employee group life insurance plan comprises the group life insurance policy issued by John Hancock and the group insurance certificate booklet entitled "Your Group Insurance Plan," (Plaintiff's Exhibit 14), delivered to the employee at the time of his first employment, in May 1985 (App. pp. 35a, 81a-82a). The group life insurance policy provided:

> If on the date the amount of the Employee's insurance is determined in accordance with the foregoing, the Employee is not actually at work for his Employer, he shall not be entitled to any increase in insurance or any additional benefits for which he may be eligible until he actually returns to work.
>
> (App. p. 31a)

In addition, the certificate booklet "Your Group Insurance Plan", Plaintiff's Exhibit 14, provided:

> WHEN DOES INSURANCE BECOME EFFECTIVE.
>
> For you – insurance becomes effective on the date you've become eligible, provided you are actively at work on said date, otherwise on the first date thereafter on which you are actively at work.
>
> (App. p. 34a)

The certificate booklet went on to set forth a definition of "actively at work". It was intended to describe the terms of the policy (App. p. 34a). Thus it is undisputed that the employee Joseph Gridley did receive a booklet containing a detailed description of the terms of the group life insurance plan, including the "actively at work" condition on eligibility for benefit increases.

The District Court concludes that Gridley is not entitled to recover benefits due under the terms of the plan, pursuant to 29 U.S.C. § 1132(a)(1)(B), in that Gridley was never "actively at work", on or after the benefit increase.

The District Court then addresses Gridley's final argument, that she is entitled to recover the increased life insurance benefit under a theory of promissory estoppel. The District Court sets forth the elements of promissory estoppel:

> Gridley must show that there was (1) a material misrepresentation, (2) that she reasonably relied upon that misrepresentation, (3) damage resulting from that misrepresentation.
>
> (App. p. 85a)

The Court concludes:

> We are of the view that the actions of Cleveland employees did indicate that the Gridleys were eligible for benefits under the new plan and that reliance upon the actions of these employees was reasonable. We are, however, unable to conclude that the Gridleys were prejudiced or damaged by their reliance on the actions of Cleveland employees. If Mr. Gridley was informed that there was some question as to his eligibility because of an "actively-at work" condition, he would have been unable to fulfill that requirement.

(App. p. 87a)

Thus the sole basis for the Court's imposition of liability on Cleveland Pneumatic Company flows from the District Court's conclusion that the new overview brochure, distributed to the employee, was a summary plan description, and that that summary plan description failed to set forth the "actively at work" condition on receipt of increased life insurance benefits. The Court imposes liability notwithstanding the fact that the eligibility condition at issue was disclosed in writing to the employee, in a booklet concerning the group life insurance program which he received prior to the increase in benefits. The Court fails to identify any provision of ERISA which authorizes the relief the Court grants. The Court accepts the contention that the group life insurance plan does contain an "actively at work" condition, and rejects the employee's claim for benefits under 29 U.S.C. § 1132(a)(1)(B). Finally, the Court holds that the employee suffered no damage by reason of the failure of the new overview brochure to disclose the "actively at work"

condition, since, even if the employee had known of the condition, he would not have been capable of compliance.

SUMMARY OF THE ARGUMENT

The employee Joseph Gridley was provided with a booklet, summarizing the provisions of the group life insurance plan, including the "actively at work" condition on eligibility for participation in increased benefits, at the time he was first employed. The employer contended that the document he was subsequently provided with, the new overview brochure, was a summary of material modifications of the plan, and not a summary plan description. In reversing the District Court's finding that the new overview brochure was a summary plan description, the Court of Appeals engaged in a detailed factual analysis. This fact-specific analysis limits the applicability of the instant holding to the facts of this case, and renders this case an inappropriate vehicle for pronouncements of national import concerning ERISA.

Mrs. Gridley failed to prove any prejudice or detriment resulting from disclosure violations. The Court of Appeal's rejection of a remedy for disclosure violations in the absence of damage to the plan participant is consistent with the limited remedies provided by Congress in ERISA, and with the decisions of this Court and of other Circuit Courts.

ARGUMENT

1. The United States Court of Appeals for the Third Circuit's conclusion that the new overview brochure provided to Plaintiff was not a summary plan description has little impact beyond the facts of this case.

Mrs. Gridley contends that the new overview brochure, Plaintiff's Exhibit 19, provided to her subsequent to her husband's departure from work with a terminal illness, was a "summary plan description", violative of the requirements for summary plan descriptions, set forth in 29 U.S.C. § 1022(b). She bases that claim primarily on the contention that the new overview brochure must have been the summary plan description, since there was no other document distributed to herself or her husband which complied with requirements set forth in 29 U.S.C. § 1022(b) for summary plan descriptions. She seeks to have the Court ignore the fact that, at the time he was first employed, in May 1985 (just six months prior to his departure from work with a terminal illness), Mr. Gridley was provided with the insurance certificate booklet "Your Group Insurance Plan", Plaintiff's Exhibit 14. As noted by the Court of Appeals, this booklet contained "a lengthy description of the terms of the group insurance policy" (App. p. 5a). Admittedly, this booklet lacked much of the information required of ERISA for a summary plan description. However, in one respect, critical to this case, it did comply with the summary plan description requirements set forth at 29 U.S.C. § 1022(b). The booklet did set forth the pertinent condition on eligibility for participation in benefit increases, the "actively at work" condition.

In addition, at the time of first employment Joseph Gridley signed an application card, applying for the group life insurance coverage, which stated, directly above his signature:

> I certify that I am an active, full-time employee of the above-named employer and work a regularly scheduled work week with such employer. I understand that if I do not meet these requirements I am not eligible for any insurance. I certify that I have read and understood the above provisions.

(App. pp. 37a-38a, Finding of Fact 46)

In November 1986, Joseph Gridley signed an identical application card, applying for the increased life insurance benefit. That card contained the same certification, directly above his signature (App. p. 43a, Finding of Fact 73). He was off work on sick leave at the time he signed that card (App. p. 58a, Finding of Fact 162).

The group life insurance plan at issue was modified as of January 1, 1986. As far as group life insurance was concerned, the modification was solely limited to increasing the dollar amount of the benefits available. Those benefits continued to be provided pursuant to and subject to the conditions of John Hancock's group life and health insurance policy. The District Court refers occasionally to the "new plan" taking effect January 1, 1986, but actually what occurred was a modification of the old plan.

29 U.S.C. § 1022(a)(1) provides, in its last sentence:

> A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated

> to be understood by the average plan participant and shall be furnished in accordance with § 1024(b)(1) of this title.

The cited section, 29 U.S.C. § 1024(b)(1) provides, in pertinent part:

> If there is a modification or change described in § 1022(a)(1) of this title, a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan.

While ERISA imposes detailed requirements concerning the contents of a summary plan description, it does not specify what need be contained in a summary of material modifications of a plan, other than to state that material modifications be summarized. There is no statutory requirement that a summary of material modifications restate all eligibility requirements and disqualifying conditions, if those eligibility requirements and disqualifying conditions have not been materially modified. Furthermore, the time limit for distribution of a summary of material modifications of a plan imposed by 29 U.S.C. § 1024(b)(1) indicates that the plan administrator was not required to supply any summarization of the modifications to the plan at any time prior to Mr. Gridley's death.

The District Court found that the new overview brochure (Plaintiff's Exhibit 19) was a document which "summarized the material modifications in employee benefits coming into effect on January 1, 1986" (App. p. 40a). Nevertheless, the District Court rejected the employer's contention that the new overview brochure was a summary of material modifications of the plan, and

accepted Mrs. Gridley's contention that it was a summary plan description containing a critical defect (the absence of the "actively at work" condition) rendering it in violation of 29 U.S.C. § 1022(b).

The Third Circuit rejected the District Court's conclusion, setting forth four reasons why the new overview brochure was not a summary plan description. The Third Circuit's analysis of this issue is set forth in detail in Mrs. Gridley's Petition for Writ of Certiorari.

The merits of the Third Circuit's detailed analysis of the issue of whether the new overview brochure constituted a "summary plan description" is of less significance to the pending Petition for Writ of Certiorari than the fact that such a detailed, fact-specific analysis was necessary. The Third Circuit's analysis is tied to the particular facts of this case. No issues of general import are decided. The fact-specific analysis by the Third Circuit renders this case an inappropriate vehicle for pronouncements by this Court on issues of general import and national policy, relating to ERISA.

2. The United States Court of Appeals for the Third Circuit properly held that, under the facts of the instant case, ERISA provides no remedy for the disclosure violation.

The issue of whether the new overview brochure was, or was not, a summary plan description is actually of marginal significance. The real question presented by this case is whether, under the specific facts of this case, ERISA provides a remedy to the Plaintiff. We assume, for the sake of argument, that the employer was guilty of

reporting and disclosure violations, under ERISA Section 102(b), 29 U.S.C. § 1022(b). The question then arises as to what remedies ERISA provides for such violations.

This Court has had previous occasion to analyze the remedies provided by ERISA in *Massachusetts Mutual Life Insurance Company v. Russell*, 473 U.S. 134, 105 S.Ct. 3085, 87 L.Ed. 2d 96 (1985). In that case, an ERISA plan beneficiary sought damages from a plan fiduciary based on the fiduciary's alleged failure to process claims in good faith and in a fair and diligent manner. In rejecting the Plaintiff's claim to a right to monetary relief, the Court stated:

> The six carefully-integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted, however, provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly. The assumption of inadvertent omission is rendered especially suspect upon close consideration of ERISA's interlocking, interrelated and interdependent remedial scheme, which is in turn part of a "comprehensive and reticulated statute".
>
> 473 U.S. 146, 105 S.Ct. at 3093.

As noted by the Court of Appeals, ERISA expressly provides two causes of action to remedy reporting and disclosure violations: ERISA Sections 502(a)(4) and (c), 29 U.S.C. § 1132(a)(4) and (c) (App. p. 20a). Neither of these sections provide the remedy which Mrs. Gridley was granted by the District Court, nor are they at issue in the instant case.

Consistent with the dictates of *Massachusetts Mutual Life Insurance Company v. Russell*, supra, the Court of

Appeals concludes that, even assuming that the employer violated ERISA's Summary Plan Description requirements, no remedy is provided by ERISA in the instant case. The Court relies on its prior decision in *Hozier v. Midwest Fasteners, Inc.*, 908 F.2d 1135 (3d Cir. 1990) to support its holding. The *Hozier* decision holds that an employer's reporting and disclosure violations were irrelevant to a determination of an employee's entitlement to benefits under terms of a severance plan, since ERISA fails to provide that remedy for such violations. The Court in *Hozier* notes some disagreement with the Ninth Circuit decision in *Blau v. DelMonte Corporation*, 748 F.2d 1348 (9th Cir. 1984) cert. denied, 474 U.S. 865, 106 S.Ct. 183, 88 L.Ed. 2d 152 (1985). As noted by the Third Circuit in *Hozier*, *Blau* held that "a Court must consider continuing (reporting and disclosure) violations in determining whether the decision to deny benefits was arbitrary and capricious." *Blau*, 748 F.2d at 1354. As further noted by the Third Circuit, the thrust of *Blau* seems directed toward mitigating the effect of the then established standard of review requiring a Court to defer to the plan administrator unless its decision were "arbitrary and capricious". The Court in *Hozier* suggests that the *Blau* holding has been rendered superfluous by this Court's rejection, in *Firestone Tire and Rubber company v. Bruch*, 489 U.S. 101, 109 S.Ct. 948, 103 L.Ed. 2d 80 (1989), of the arbitrary and capricious standard of review, in favor of a de novo review of the plan administrator's decision.

Given *Blau's* focus on the standard of review, its significance is far from clear subsequent to *Bruch*. In any event, the concern of the Court in *Blau* is that "procedural violations may . . . work a substantive harm." *Blau*, 748

F.2d at 1354. That "substantive harm" is totally lacking in the instant case. The District Court in the instant case held that Mrs. Gridley could prove no detriment or damage, flowing from the employer's ERISA violations. Even if the employee Joseph Gridley had been fully informed of the actively at work condition in a summary plan description which complied in every respect with the requirements of ERISA, he would nevertheless have been unable to bring himself into compliance with the condition and render himself eligible for the increased life insurance benefit.

Mrs. Gridley, in her Petition, suggests that the Third Circuit decision allows for no remedy in the event of a violation of ERISA's requirements concerning summary plan descriptions. Her argument significantly overstates the effect of the Third Circuit's ruling. First of all, her argument ignores the fact that ERISA provides specific remedies for disclosure violations, at 29 U.S.C. § 1132(a)(4) and (c). Secondly, the Third Circuit's decision is limited, by the facts of this case, to instances where the disclosure violations have resulted in no harm or damage to the plan beneficiary. In rejecting a claim for a recovery in the absence of proof of detriment or prejudice flowing from the disclosure violation, the Third Circuit has decided this case consistently with the other circuits that have ruled on this issue. *See Govoni v. Bricklayers, Masons and Plasterers International Union*, 732 F.2d 250 (1st Cir. 1984); *Bachelder v. Communication Satellite Corp.*, 837 F.2d 519 (1st Cir. 1988); *McKnight v. Southern Life and Health Insurance Company*, 758 F.2d 1566 (11th Cir. 1985). In fact, the concern of the Court in *Blau v. DelMonte Corporation*, supra, with procedural violations working a substantive

harm, indicates that the Ninth Circuit would also require a demonstration of prejudice or detriment to support a recovery.

As noted by the Third Circuit Court of Appeals in the instant case, at App. p. 21a, the Sixth Circuit, in *Edwards v. State Farm Mutual Automobile Insurance Company,* 851 F.2d 134 (6th Cir. 1988) appears to take a different view, stating that "existing precedent does not dictate that a claimant who has been misled by summary descriptions must prove detrimental reliance." *Edwards,* supra, 851 F.2d at 137. This statement by the Sixth Circuit is *dicta,* since the Court finds that the beneficiary in that case "relied to his detriment upon the language of the summary." *Id.* Thus there does not appear to be a true conflict between the holding of the Third Circuit Court of Appeals and the holdings of any other circuits, in connection with the requirement that a Plaintiff demonstrate prejudice in order to recover for a disclosure violation under ERISA.

Given Mrs. Gridley's inability to demonstrate any detriment or prejudice flowing from the disclosure violation at issue in this case, the Third Circuit Court of Appeals decision in this case stands merely for the mundane legal proposition that, in the absence of explicit statutory authorization, a Plaintiff will be denied a remedy where she fails to prove any damage. Under these circumstances, the case before this court fails to provide an appropriate instance "to tamper with an enforcement scheme crafted with such evident care as the one in ERISA." *Massachusetts Mutual Life Insurance Company v. Russell,* supra, 473 U.S. at 147, 105 S.Ct. at 3093.

CONCLUSION

For the foregoing reasons, Respondent contends that the instant case presents no important question of federal law. The decision of the United States Court of Appeals for the Third Circuit does not conflict with the decisions of other circuits. Respondent requests that this action be concluded and that this Petition for Writ of Certiorari be denied.

Respectfully submitted,

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